

DECISION

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**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE:

B-210415

DATE: October 11, 1983**MATTER OF:**

M/A-Com Alanthus Data, Inc.

DIGEST:

Proposal submitted by ADP schedule contractor in response to a Commerce Business Daily announcement of intent to place an order under another ADP schedule contract need not be accepted despite its lower price and apparent responsiveness where the procuring agency had a reasonable basis for believing that the proposed equipment would not perform an essential operation based upon the agency's contemporaneous experience with the same make and model of equipment as proposed. Moreover, in view of this contemporaneous experience with the protester's equipment, the agency was not required to give the protester a separate opportunity to demonstrate the operability of its equipment.

M/A-Com Alanthus Data, Inc., formerly Alanthus Data Communications Corporation, protests the U.S. Geological Survey's issuance of a delivery order to Terminals Unlimited under that firm's ADP schedule contract No. GS-00C-03205 to purchase six Renex controllers. Alanthus contends that the award was improper because it was not given an opportunity to demonstrate that the lower priced controller offered under its ADP schedule contract performed the required functions in a satisfactory manner. We find that Alanthus' protest is without merit.

In early 1982, prior to the instant procurement, the Geological Survey purchased an Alanthus Model C30 Terminal Controller/Concentrator for use at the Department of Interior's Washington Computer Center. The Geological Survey reports that after 6 months of effort Alanthus' technical representatives finally succeeded in making the Alanthus controller operate by installing a new logic board but that throughout the period in question neither Alanthus' technical representatives nor the government's

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computer specialists were able to make the automatic disconnect feature of the unit operate. The agency reports further that it borrowed a Renex controller from the Bureau of Indian Affairs while the problems with the Alanthus controller were being corrected and that the Renex unit operated properly from the beginning.

Consequently, when the Geological Survey identified a need for six additional controllers in October of 1982, it decided to order the Renex unit and, in accordance with Federal Procurement Regulations (FPR) § 1-4.1109-6(f)(1) (1964 ed., amend. 211) published a synopsis of this intent in the November 12 Commerce Business Daily.

Alanthus responded by letter of November 23, offering to supply its Model C80 Terminal Controller/Converter for \$8,047.50 each. Alanthus stated that "with regard to the special disconnect feature, the C80 has an easy to use, programmable feature" and offered to demonstrate the feature if desired. The agency did not take up Alanthus' offer for a demonstration, but during December the agency's computer specialists contacted Alanthus by telephone and received detailed instruction on the operation of the automatic disconnect feature. They were, however, unable to make this feature operate on the existing Alanthus controller.

On January 3, 1983, Geological Survey's computer specialists reported to the contracting officer that the Alanthus controller was unsatisfactory because they had been unable to get the automatic disconnect feature on the existing unit to work. They further reported that this failure could cause severe security problems since it permitted a subsequent user of the computer to access the prior user's data. On that same date, the agency issued a delivery order to Terminals Unlimited against ADP schedule contract No. GS-00C-03205 for six Renex controllers, at \$8,484 each, including the special disconnect feature.

Alanthus contends that its offer to provide a controller should not have been rejected without giving it an opportunity to demonstrate its special disconnect feature. Alanthus points out that both in its written offer and in its subsequent telephone conversations it offered to demonstrate the operation of this feature and states that 2 days after award its representatives did in fact successfully operate the automatic disconnect feature on the existing Alanthus controller. Alanthus therefore requests a reopening of the competition; the appointment of a qualified technical panel to conduct the evaluation; and

an opportunity to demonstrate the special disconnect feature under these conditions.

The Geological Survey disagrees, asserting that during the course of the two procurements both brands of equipment, including the essential disconnect feature, were thoroughly tested and evaluated, through post-award testing in the prior case and pre-award evaluation in the instant case. Consequently, the agency believes that the protester was given ample opportunity to demonstrate the operation of its controller. Finally, the agency asserts that it is neither reasonable nor in the government's best interests to re-procure equipment that has proven to be unsatisfactory.


Under the governing regulations, procuring agencies are permitted to place an order against ADP schedule contracts when certain conditions are satisfied. One condition is that when an offer is received from another source in response to a synopsis in the Commerce Business Daily, the procurement file must be documented to show that the proposed schedule order is the lowest overall cost alternative to the agency, price and other factors considered. FPR § 1-4.1109-6(b)(4). Just as in the case for non-schedule offerors, when another schedule contractor offers a comparable item at a lower price, the agency must appropriately justify its determination to procure from the higher priced schedule supplier. FPR § 1-4.1109-6(h). Our Office will not take objection to such a justification for purchase at other than the lowest price unless it is shown to be unreasonable. See Quest Electronics, B-193541, March 27, 1979, 79-1 CPD 205.

Here, the evaluation was based both on Alanthus' written offer and the agency's contemporaneous experience with the same model of controller Alanthus offered. Given this experience, which showed that despite repeated efforts over many months the agency's experienced computer specialists could not get a critical feature of the controller to operate, we think it was reasonable for the agency to conclude that the Alanthus controller did not satisfy its minimum requirements. In these circumstances, the January 3 memorandum of evaluation, explaining that Alanthus had failed to demonstrate the special disconnect feature, constitutes the required justification for award to other than the lowest priced offeror.

Further, given Geological Survey's contemporaneous experience with Alanthus' recently installed controller and its telephone inquiries seeking directions from Alanthus for operating the disconnect feature at the very time it was evaluating Alanthus' new offer, we do not believe that the agency was required to seek a further demonstration of the Alanthus controller. In this regard, Alanthus' personnel previously had been on the site working on the controller without, apparently, either ensuring that the special disconnect feature was operable or adequately instructing the agency personnel on its operation. Consequently, we believe that Alanthus was given an adequate opportunity to show that the controller it offered satisfied the agency's minimum technical needs.

Finally, even if, as Alanthus contends, its representatives were able to operate the special disconnect feature on the Geological Survey's existing Alanthus controller when they gained access to it shortly after the January 3 award date, that fact alone does not indicate any impropriety. The judgment expressed by the government's evaluators was necessarily based on the agency's experience with the Alanthus controller prior to award.

The protest is denied.

for 
Comptroller General
of the United States